

C-5181

A.G. Contract No.: KR04-0776TRN
ADOT ECS File No.: JPA 04-057
Project No.: RAM 060-B-507
Project: US 60 (Grand Avenue)
Section: 59th Avenue & Glendale Avenue
(Grand Avenue Underpass)
TRACS No.: H5610 01C
Budget Source Item No.: 81905

INTERGOVERNMENTAL AGREEMENT

BETWEEN
THE STATE OF ARIZONA
AND
THE CITY OF GLENDALE

THIS AGREEMENT is entered into 15th November, 2004, pursuant to Arizona Revised Statutes, § 11-951 through § 11-954, as amended, between the STATE OF ARIZONA, acting by and through its DEPARTMENT OF TRANSPORTATION (the "State") and the CITY OF GLENDALE, ARIZONA, acting by and through its CITY MANAGER and CITY COUNCIL (the "City").

I. RECITALS

1. The State is empowered by Arizona Revised Statutes § 28-401 to enter into this Agreement and has delegated to the undersigned the authority to execute this Agreement on behalf of the State

2. The City is empowered by Arizona Revised Statutes § 48-572 to enter into this Agreement and has by resolution, a copy of which is attached hereto and made a part hereof, resolved to enter into this Agreement and has authorized the undersigned to execute this Agreement on behalf of the City.

3. In conjunction with the State's roadway construction improvements of US 60/Grand Avenue Underpass at 59th & Glendale Avenues, the City requests the State incorporate the following 3 elements into the State's construction project: 1) design and construct Grand Avenue underpass aesthetic enhancements, at an estimated cost of \$1,106,490.00; 2) construct improvements to drainage system to benefit the Downtown Glendale Area, at a lump sum cost of \$1,760,000.00; 3) additional City funding, at approximately 25% participation level, for right-of-way needed to realign 57th Drive to intersect Grand Avenue at a right angle, at a lump sum cost of \$230,000; hereinafter referred to as the "Project". The City will fund the Project, in an estimated amount of \$3,248,277.00, including construction and design engineering administration costs, as shown on Exhibit A, attached hereto and made a part hereof. The purpose of this Agreement is to define each party's responsibility.

NO. 27220
Filed with the Secretary of State
Date Filed: 11/15/04

Janice K. Brewer
Secretary of State

By: Darryl D. Graesswald

4. The parties hereto agree to and acknowledge the following conditions: a) The estimated amounts referenced in this Agreement are subject to change and can change substantially; b) Both parties will perform their responsibilities consistent with this Agreement; c) Any change or modification to the Project will only occur with the mutual Agreement of the City and the State.

THEREFORE, in consideration of the mutual agreements expressed herein, it is agreed as follows:

II. SCOPE OF WORK

1. The State will:

a. Upon execution of this Agreement, invoice the City in the amount of \$2,923,277.00, then on July 1, 2005 invoice the City the remaining estimated balance of \$325,000, for the total estimated costs of the Project, \$3,248,277.00, (TRACS No.: H5610 01C), which includes the fixed percentages as shown on Exhibit A, attached hereto and made a part hereof.

b. Agree to be the authorized agent for the City and on behalf of the City prepare to State and City standards; design plans, specifications and other such documents and services required for the construction bidding and construction of the Project. Coordinate with the City for review of the above said documents and incorporate review comments as appropriate.

c. Call for bids, award one or more construction contract(s) to accomplish the Project; administer same and make all payments to the contractor(s). Confer with the City on any contract modifications related to the Project.

d. Upon completion of the Project, perform the final inspection and notify the City in writing that the Project has been constructed in accordance with the Project documents.

e. Upon completion of the Project, provide the City with a recapitulation of the Project cost; invoice or reimburse the City any difference between the estimated amount paid by the City and the actual costs for construction of item 1 referenced in Section I.3, which includes fixed percentages as depicted on Exhibit A.

2. The City will:

a. Upon execution of this Agreement and within 30 days of receipt of an invoice, remit to the State \$3,248,277.00 in two payments as identified in Article II.1.a above, for the estimated costs of the Project, (TRACS No.: H 5610 01C), which includes the fixed percentages as shown on Exhibit A.

b. Agree to designate the State as authorized agent for the City, for the construction and administration of the Project.

c. Coordinate with the State, for the review of design plans, specifications and other such documents and services required for construction of the Project. Provide review comments as appropriate.

d. Be responsible for any costs, for additional work requested by the City, associated with the Project and for any contractor claims for extra compensation due to delays or whatever reason, attributable to the City.

e. Upon completion and acceptance of the Project, reimburse the State if the actual costs incurred by the State for the Project, exceeds the amount of the City's remittance, within 30 days after receipt of an invoice for the actual cost of the Project, which includes fixed percentages as depicted on Exhibit A.

f. Upon completion and acceptance of the referenced Project by the State, be responsible to provide for, at its own cost and as an annual item in its budget, proper maintenance for item 1 shown on Exhibit A.

III. MISCELLANEOUS PROVISIONS

1. The State assumes no financial obligation or liability under this Agreement. The City, in regard to the City's relationship with the State and only in regards to the City requested elements identified in Section I.3, assumes full responsibility for the design, plans, specifications, reports, the engineering in connection therewith and the construction of the improvements contemplated, cost over-runs and construction claims for those City requested improvements. It is understood and agreed; that any damages arising from carrying out, in any respect, the terms of this Agreement or any modification thereof, shall be solely the liability of the City and that to the extent permitted by law, the City hereby agrees to save and hold harmless and indemnify from loss the State, any of its departments, agencies, officers or employees from any and all cost and/or damage incurred by any of the above and from any other damage to any person or property whatsoever, which is caused by any activity, condition, misrepresentation, directives, instruction or event arising out of the performance or nonperformance of any provisions of this Agreement by the State, any of its departments, agencies, officers and employees the City, any of its agents, officers and employees, or any of its independent contractors. Costs incurred by the State, any of its departments, agencies, officers or employees shall include in the event of any action, court costs, and expenses of litigation and attorneys' fees.

2. The terms, conditions and provisions of this Agreement shall remain in full force and effect until completion and reimbursements; provided herein. However, any provisions for maintenance provided by the City shall be perpetual. This agreement may be terminated by either party at any time upon sixty (60) days written notice to either party. It is understood and agreed that, in the event the City terminates this agreement, the State shall in no way be obligated to maintain the items referenced in Section I.3.

3. This Agreement shall become effective upon filing with the Secretary of State.

4. This Agreement may be cancelled in accordance with Arizona Revised Statutes § 38-511.

5. The provisions of Arizona Revised Statutes § 35-214 are applicable to this contract.

6. This Agreement is subject to all applicable provisions of the Americans with Disabilities Act (Public Law 101-336, 42 U.S.C. 12101-12213) and all applicable federal regulations under the Act, including 28 CFR Parts 35 and 36. The parties to this Agreement shall comply with Executive Order Number 99-4 issued by the Governor of the State of Arizona and incorporated herein by reference regarding "Non-Discrimination".

7. **Non-Availability of Funds.** Every payment obligation of the State under this contract is conditioned upon the availability of funds appropriated or allocated for the payment of such obligation. If funds are not allocated and available for the continuance of this contract, this contract may be terminated by the State at the end of the period for which the funds are available. No liability shall accrue to the State in the event this provision is exercised, and the State shall not be obligated or liable for any future payments or for any damages as a result of termination under this paragraph.

8. In the event of any controversy, which may arise out of this agreement, the parties hereto agree to abide by required arbitration as is set forth for public works contracts in Arizona Revised Statutes § 12-1518.

9. All notices or demands upon any party to this Agreement shall be in writing and shall be delivered in person or sent by mail addressed as follows:

For Contract Issues:

Arizona Department of Transportation
Joint Project Administration
205 South 17 Avenue, MD 616E
Phoenix, AZ 85007
FAX: (602) 712-7424

City of Glendale
City Manager's Office
5850 West Glendale Avenue
Glendale, AZ 85301
FAX: (623) 847-1399

For Billing Issues:

Arizona Department of Transportation
Cost Accounting
206 South 17 Avenue, MD 204B
Phoenix, AZ 85007
FAX: (602) 712-8471

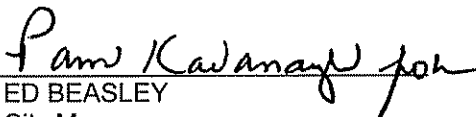
City of Glendale
Finance
5850 West Glendale Avenue
Glendale, AZ 85301
FAX: (623) 915-2827

10. Pursuant to Arizona Revised Statutes § 11-952, (D), attached hereto and incorporated herein, is the written determination of each party's legal counsel that the parties are authorized under the laws of this State to enter into this Agreement and that the Agreement is in proper form.

IN WITNESS WHEREOF, the parties have executed this Agreement the day and year first above written.

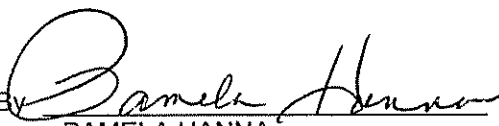
CITY OF GLENDALE
a Municipal Corporation

STATE OF ARIZONA
Department of Transportation

By 
ED BEASLEY
City Manager

By 
DANIEL S. LANCE, P.E.
Deputy State Engineer

ATTEST

By 
PAMELA HANNA
City Clerk

**EXHIBIT A
SUMMARY**

**GRAND AVE CORRIDOR: 59TH AVE/GLENDALE AVE
DESCRIPTION AND COST OF PAY ITEMS FOR THE CITY OF GLENDALE ENHANCEMENTS**

Item	DESCRIPTION	Cost		Total	DESCRIPTION
		Design	Construction		
1	AESTHETIC ENHANCEMENTS	\$34,729.00	\$1,071,761.00	\$ 1,106,490.00	Aesthetic Enhancements on the retaining walls and bridge deck and upgraded fencing. (Estimated)
2	DOWNTOWN DRAINAGE FUNDING SHARE	\$ -	\$ 1,760,000.00	\$ 1,760,000.00	Glendale's share of drainage improvements implemented into the ADOT project benefiting the downtown Glendale area. (Lump Sum)
3	CITY FUNDING FOR RIGHT-OF-WAY	\$ -	\$ 230,000.00	\$ 230,000.00	Glendale's 25% share of right-of-way required for the realignment of 57th Drive to intersect Grand Avenue at a right angle. (Lump Sum)
	SUBTOTAL	\$34,729.00	\$3,061,761.00	\$3,096,490.00	
	14% CONSTRUCTION ENGINEERING AND ADMINISTRATION	\$ -	\$ 150,047.00	\$ 150,047.00	Construction Engineering and Administration was calculated on a percentage basis of the construction costs of the City's Item No. 1.
	5% DESIGN ENGINEERING ADMINISTRATION	\$ 1,740.00	\$ -	\$ 1,740.00	Engineering Administration was calculated on a percentage basis of the construction costs of the City's Item No. 1.
	TOTAL	\$ 36,469.00	\$ 3,211,808.00	\$ 3,248,277.00	

DETAILED ESTIMATE SHOWN ON WORKSHEET TAB FOR ITEM 1

EXHIBIT A
ITEM 1 SUMMARY BACKUP

Item No	Item Description	Unit	Quantity	Unit Price	Amount
1	GLENDALVE AVENUE - AESTHETIC ENHANCEMENTS				
2	ESTIMATED COST				
3					
4	6014955 PRECAST, P/S MEMBER (AASHTO TYPE 5 MOD. GR.)	L.FT.	187	\$100.00	\$23,375.00
5	9030008 FENCE (ON WALLS, WITH PILLARS, ARTISTIC)	L.FT.	3,795	\$136.00	\$516,120.00
6	9080041 CONCRETE CURB (DECORATIVE PAVEMENT HEADER)	SQ. FT.	1,455	\$10.00	\$14,550.00
7	9140104 DECORATIVE PAVEMENT	SQ.FT.	4,860	\$10.00	\$48,600.00
8	9240118 MISCELLANEOUS WORK (BRICK SIDEWALK)(DET L10)	SQ.FT.	3,015	\$13.00	\$39,195.00
9	9240119 MISCELLANEOUS WORK (PEDESTRIAN FENCE MAIN SUPPORT COLUMNS)	EACH	6	\$5,800.00	\$34,800.00
10	9240120 MISCELLANEOUS WORK (STEEL TRELLIS)	EACH	14	\$1,625.00	\$22,750.00
11	9240121 MISCELLANEOUS WORK (PLANTER COLUMNS)	EACH	13	\$6,740.00	\$87,620.00
12	9240144 MISCELLANEOUS WORK (DECORATIVE SAFETY RAIL)	L.FT.	176	\$60.00	\$10,560.00
13	9240145 MISCELLANEOUS WORK (RAISED PLANTER BOX)	L.FT.	190	\$300.00	\$57,000.00
14	9240146 MISCELLANEOUS WORK (DECORATIVE PEDESTRIAN SAFETY FENCE)	L.FT.	146	\$145.00	\$21,170.00
15	9080242 CONCRETE SIDEWALK (MAG DET 230) - CREDIT	SQ.FT.	1,151	(\$2.25)	\$39,195.00
16	WALL RUSTICATION	SQ.FT.	7,690	\$2.50	\$19,225.00
17	BARRIER RUSTICATION	SQ.FT.	1,250	\$1.50	\$1,875.00
18					
19	SUBTOTAL CONSTRUCTION COST (1)				\$936,035.00
20					
21	MAINTENANCE OF TRAFFIC SHARE ¹	L.SUM	1	2.60%	\$24,337.00
22	CONSTRUCTION SURVEYING AND LAYOUT SHARE ²	L.SUM	1	2.10%	\$19,657.00
23	CONTRACTOR QUALITY CONTROL SHARE ³	L.SUM	1	1.50%	\$14,041.00
24	MOBILIZATION SHARE ⁴	L.SUM	1	8.30%	\$77,691.00
25					
26	SUBTOTAL CONSTRUCTION COST (2)				\$1,071,761.00
27	DESIGN ENGINEERING				\$34,729.00
28	ITEM 1 TOTAL COST				\$1,106,490.00
29					

Notes:

- Maintenance of Traffic was calculated on a percentage basis (2.6%) based upon the Contractor's actual bid on the 27th Ave/91st Ave & 43rd Ave/51st Ave Grand Projects) of the construction cost of the City's items.
- Construction Surveying and Layout was calculated on a percentage basis (2.1%) based upon the Contractor's actual bid on the 27th Ave/91st Ave & 43rd Ave/51st Ave Grand Projects) of the construction cost of the City's items.
- Contractor Quality Control was calculated on a percentage basis (1.5%) based upon the Contractor's actual bid on the 27th Ave/91st Ave & 43rd Ave/51st Ave Grand Projects) of the construction cost of the City's items.
- Mobilization was calculated on a percentage basis (8.3%) based upon the Contractor's actual bid on the 27th Ave/91st Ave & 43rd Ave/51st Ave Grand Projects) of the construction cost of the City's items.

ITEM 2, EXHIBIT A SUMMARY BACKUP
DRAINAGE COST DIFFERENCE COMPARISON
GRAND AVE: 59TH AVE/GLENDALE AVE

Item	30% Design	Cost 95% Design	Difference	DESCRIPTION
DRAINAGE COSTS	\$ 5,967,500.00	\$ 7,238,700.00	\$ 1,271,200.00	Drainage Design Costs
MAINTENANCE OF TRAFFIC SHARE	\$ 155,160.00	\$ 188,210.00	\$ 33,050.00	MOT Share was calculated based on a percentage basis (2.6% based on the contractor's actual bids on Grand Ave projects).
CONSTRUCTION SURVEYING AND LAYOUT	\$ 125,320.00	\$ 152,010.00	\$ 26,690.00	Construction Survey and Layout share was calculated based on a percentage basis (2.1% based on the contractor's actual bids on Grand Ave projects).
CONTRACTOR QUALITY CONTROL	\$ 89,510.00	\$ 108,580.00	\$ 19,070.00	Contractor quality control share was calculated based on a percentage basis (1.5% based on the contractor's actual bids on Grand Ave projects).
MOBILIZATION SHARE	\$ 495,300.00	\$ 600,810.00	\$ 105,510.00	Mobilization share was calculated based on a percentage basis (8.3% based on the contractor's actual bid on Grand Ave projects).
SUBTOTAL 1	\$ 6,743,280.00	\$ 8,288,310.00	\$ 1,545,030.00	
14% CONSTRUCTION ENGINEERING AND ADMINISTRATION	\$ 944,059.00	\$ 1,160,363.00	\$ 216,304.00	
SUBTOTAL 2	\$ 7,687,339.00	\$ 9,448,673.00	\$ 1,761,334.00	
TOTAL		USE \$	\$ 1,760,000.00	

ITEM 3, EXHIBIT A SUMMARY BACKUP
RIGHT-OF-WAY FUNDING
GRAND AVE: 59TH AVE/GLENDALE AVE

Item	Cost	Description	PARCELS
Additional City Funding for project right-of-way requirements	\$ 230,000.00	City funding participation for realigning 57th Drive to intersect Grand Avenue at a right angle, at approximately 25% participation level	7-9498-Bhakta (Trails End Motel)
ITEM 3 TOTAL	\$ 230,000.00		

RESOLUTION NO. 3799 NEW SERIES

A RESOLUTION OF THE COUNCIL OF THE CITY OF GLENDALE, MARICOPA COUNTY, ARIZONA, AUTHORIZING AND DIRECTING THE ENTERING INTO OF THE INTERGOVERNMENTAL AGREEMENT WITH THE ARIZONA DEPARTMENT OF TRANSPORTATION FOR IMPROVEMENTS TO THE PROPOSED GRAND AVENUE UNDERPASS PROJECT AT 59TH AND GLENDALE AVENUES.

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF GLENDALE as follows:


SECTION 1. That it is deemed in the best interest of the City of Glendale and the citizens thereof that the Intergovernmental Agreement between the City of Glendale and the Arizona Department of Transportation be entered into, which agreement is now on file in the office of the City Clerk of the City of Glendale.

SECTION 2. That the Mayor or City Manager and the City Clerk be authorized and directed to execute and deliver said agreement on behalf of the City of Glendale.

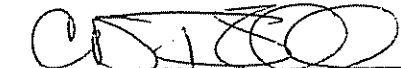
PASSED, ADOPTED AND APPROVED by the Mayor and Council of the City of Glendale, Maricopa County, Arizona, this 12th day of October, 2004.


MAYOR

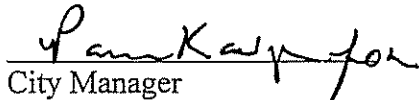
ATTEST:


City Clerk (SEAL)

APPROVED AS TO FORM:


City Attorney

REVIEWED BY:


City Manager

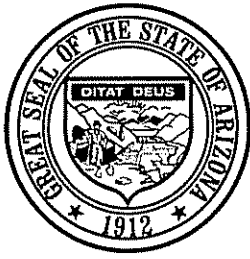
APPROVAL OF THE CITY OF GLENDALE ATTORNEY

I have reviewed the above referenced intergovernmental agreement between the DEPARTMENT OF TRANSPORTATION, INTERMODAL TRANSPORTATION DIVISION, and the CITY OF GLENDALE, an agreement among public agencies which, has been reviewed pursuant to A.R.S. section 11-951 through 11-954 and declare this agreement to be in proper form and within the powers and authority granted to the CITY under the laws of the State of Arizona. No opinion is expressed as to the authority of the State to enter into this agreement

DATED this 13th day of OCTOBER, 2004.

A handwritten signature in black ink, appearing to be "G. S. [unclear]", written over a horizontal line.

City Attorney



**ATTORNEY GENERAL
CIVIL DIVISION
TRANSPORTATION SECTION**

MEMORANDUM

Jeffrey T. Murray
Assistant Attorney General

Direct: (602) 542-8859
Fax: (602) 542-3646


**INTERGOVERNMENTAL AGREEMENT
DETERMINATION**

A.G. Contract No. KR04-0776TRN (**JPA 04-057**), an Agreement between public agencies, has been reviewed pursuant to A.R.S. § 11-952, as amended, by the Undersigned Assistant Attorney General who has determined that it is in the proper form and is within the powers and authority granted to the State of Arizona.

No opinion is expressed as to the authority of the remaining Parties, other than the State or its agencies, to enter into said Agreement.

DATED November 8th, 2004.

TERRY GODDARD
Attorney General



JEFFREY T. MURRAY
Assistant Attorney General
Transportation Section